

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1163
Judiciary

(Delegates Alston and Davis)

Human Relations - Protections Against Discrimination - Criminal Records

This bill generally prohibits discrimination based on an individual's "criminal record" in places of public accommodation, the provision of services by persons licensed or regulated by the Maryland Department of Labor (MDL), the leasing of commercial property, employment, housing, and State personnel actions.

Fiscal Summary

State Effect: General fund expenditures increase, potentially significantly, for the Maryland Commission on Civil Rights (MCCR), as discussed below. The bill does not materially impact the workload of the Judiciary or the Office of Administrative Hearings (OAH). The bill is not anticipated to materially affect State revenues.

Local Effect: The bill is not expected to materially affect local finances and operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: "Criminal record" means (1) an arrest; (2) a plea or verdict of guilty; (3) a plea of *nolo contendere*; (4) the marking of a charge "stet" on the docket; (5) a disposition of probation before judgment; or (6) a disposition of not criminally responsible. This definition *does not* include (1) an arrest or disposition previously listed if the crime was committed against a minor or (2) the registration status of an individual on the Maryland Sex Offender Registry.

The bill specifies that an employer is not prohibited from making an inquiry or taking other action that the employer is required to take or is expressly authorized to take by another applicable federal or State law regarding a criminal record. Furthermore, the bill specifies that provisions regarding employment discrimination do not apply to an employer that provides programs, services, or direct care to minors or to vulnerable adults. Furthermore, the bill may not be construed to preempt a local jurisdiction from enacting or enforcing a law that is more restrictive with respect to criminal record screening practices of employers in the local jurisdiction.

Current Law:

Place of Public Accommodation

An owner or operator of a place of public accommodation (or an agent or employee of the owner or operator) may not refuse, withhold from, or deny to any person any of the accommodations, advantages, facilities, or privileges of the place of public accommodation because of the person's race, sex, age, color, creed, national origin, marital status, sexual orientation, gender identity, or disability.

Licensed or Regulated Units under § 2-108 of the Business Regulation Article

A person that is licensed or regulated by a unit in MDL listed in § 2-108 of the Business Regulation Article may not refuse, withhold from, or deny any person any of the accommodations, advantages, facilities, privileges, sales, or services of the licensed or regulated person or discriminate against any person because of the person's race, sex, creed, color, national origin, marital status, sexual orientation, age, gender identity, or disability.

Commercial Property

An owner or operator of commercial property, an agent or employee of the owner or operator of commercial property, or a person that is licensed or regulated by the State may not discriminate against an individual in the terms, conditions, or privileges of the leasing of property for commercial use, or in the provision of services or facilities in connection with the leasing of property for commercial use, because of the individual's race, color, religion, sex, age, disability, marital status, sexual orientation, gender identity, or national origin.

Employment Discrimination

Under § 20-602 of the State Government Article, it is State policy to assure that all persons have equal opportunity in employment and in all labor management-union relations. As

such, State law generally prohibits discrimination in employment on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, gender identity, genetic information, or disability (unrelated in nature and extent so as to reasonably preclude the performance of the employment).

On any of these bases or because of an individual's refusal to submit to or make available the results of a genetic test, an employer may not (1) fail or refuse to hire, discharge, or otherwise discriminate against any individual with respect to the individual's compensation, terms, conditions or privileges or (2) limit, segregate, or classify its employees or applicants for employment in any way that deprives or tends to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee. Furthermore, an employer may not (1) engage in the harassment (including sexual harassment) of an employee or (2) discriminate or retaliate against an employee or applicant because the employee/applicant has opposed any practice prohibited by State law relevant to employment discrimination or made a charge, testified, assisted, or participated in an investigation, proceeding, or hearing related to such laws. Additional prohibitions – including those specific to interns, employment agencies, labor organizations – are also specified in statute.

In general, the above prohibitions are applicable to employers that have 15 or more employees. Statute also specifically prohibits units, officers, or employees of the State, a county, or a municipal corporation from engaging in these discriminatory acts.

However, statutory provisions do not apply to specified religious entities with respect to the employment of individuals of a particular religion, sexual orientation, or gender identity to perform work connected with the activities of the religious entity. (The bill incorporates “criminal record” into these exceptions.)

Housing Discrimination

In general, State law prohibits housing discrimination because of race, sex, color, religion, national origin, marital status, familial status, sexual orientation, gender identity, source of income, or disability.

Housing discrimination includes, among other things, taking the following actions based on a protected class: (1) refusing to sell or rent a dwelling after the making of a *bona fide* offer; (2) refusing to negotiate for the sale or rental of a dwelling; (3) making a dwelling otherwise unavailable; (4) discriminating in the terms, conditions, or privileges of the sale or rental of a dwelling; (5) discriminating in the provision of services or facilities in connection with the sale or rental of a dwelling; (6) making, printing, or publishing or

causing to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates a preference, limitation, or discrimination based on a protected status; (7) representing to a person that a dwelling is not available for inspection, sale, or rental when it is available; and (8) for profit, inducing or attempting to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular protected status.

Provisions prohibiting housing discrimination do not require that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of another individual or result in substantial physical damage to the property of others, nor do they prohibit conduct against a person because the person has been convicted of the illegal manufacture or distribution of “controlled dangerous substances” or “controlled substances” as defined in State and federal law.

Personnel Actions

All personnel actions concerning a State employee or applicant for employment in State government must be made *without* regard to age; ancestry; color; creed; gender identity; marital status; mental or physical disability; national origin; race; religious affiliation, belief, or opinion; sex; or sexual orientation.

A personnel action may be taken with regard to age, sex, or disability to the extent that such factors are required by law or a *bona fide* occupational qualification. (The bill incorporates criminal records into these provisions.)

Employment and Criminal Records

Statute includes numerous provisions regarding the extent to which an individual’s criminal record may be considered during the application/hiring process. For example, § 3-1503 of the Labor and Employment Article prohibits an employer with 15 or more full-time employees from, before the first in-person interview, requiring an applicant to disclose whether the applicant has a criminal record or has had criminal accusations brought against the applicant. The provisions do not apply to an employer that is expressly authorized to do so by another applicable federal or State law or if the employer provides programs, services, or direct care to minors or to vulnerable adults.

Section 2-203 of the State Personnel and Pensions Article (generally applicable to all employees in the Judicial, Legislative, and Executive branches of State government), subject to specified exceptions, prohibits the inquiry into the criminal record or criminal history of an applicant for employment until the applicant has been provided an opportunity for an interview.

Enforcement and Remedies – In General

MCCR is the State agency charged with the enforcement of laws prohibiting discrimination in employment, housing, public accommodations, and State contracting.

Procedures for alleging discrimination and available remedies are specified in statute and differ depending on the type of discrimination alleged. For example, generally, a person claiming to have been injured by a discriminatory housing practice may file a complaint with MCCR. Statutory provisions specify the process and requirements for complaints of housing discrimination, including the responsibilities of MCCR in investigating a claim and attempting conciliation and the circumstances under which a complainant, respondent, or aggrieved person must have an opportunity for an administrative hearing conducted by OAH or may elect to file a civil action in circuit court. If an administrative law judge (ALJ) finds that the respondent has engaged in a discriminatory housing practice, the ALJ may order appropriate relief, including actual damages and injunctive or other relief, and may assess a civil penalty against the respondent. A court may award actual or punitive damages, grant injunctive relief, and allow reasonable attorney's fees and costs. Statute specifies similar procedures and remedies for claims of employment discrimination.

On a finding that a respondent has engaged in a discriminatory act in relation to specified prohibitions against discrimination in places of public accommodation, MCCR may issue an order for nonmonetary relief and/or assess a civil penalty against a respondent.

State Expenditures: General fund expenditures increase, potentially significantly, for MCCR. MCCR advises generally that the fiscal impact is indeterminate but anticipated to be significant, as adding individuals with criminal records as protected classes in statutory provisions governing multiple types of discrimination is expected to significantly increase MCCR's caseload. The Department of Legislative Services (DLS) agrees with this assessment and advises that at a minimum, MCCR is likely to incur expenditures associated with hiring additional staff to *investigate* complaints of discrimination based on an individual's criminal record. *For illustrative purposes only*, and based on information previously provided to DLS, for every additional investigator required, general fund expenditures increase by at least \$80,000 annually. Additional expenditures are also likely incurred for costs associated with training and education, among other potential expenses.

Any potential minimal increase in expenditures associated with increased cases referred to OAH or heard in the circuit courts is not anticipated to materially affect State finances.

Small Business Effect: Small businesses are prohibited from engaging in specified discriminatory practices based on an individual's criminal record (with certain exceptions) and subject to various penalties depending on the circumstances of the case (*e.g.*, actual or punitive damages, civil penalties, etc.) if found to be in violation.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 964 (Senator Benson, *et al.*) - Rules.

Information Source(s): Maryland Commission on Civil Rights; Frederick County; Maryland Municipal League; Judiciary (Administrative Office of the Courts); Department of Budget and Management; Maryland Department of Labor; Office of Administrative Hearings; Department of Legislative Services

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